

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97375; File No. SR-NYSEARCA-2023-33)

April 25, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Veridien Climate Action ETF Under Rule 8.900-E (Managed Portfolio Shares)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 18, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under Rule 8.900-E (Managed Portfolio Shares): Veridien Climate Action ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 8.900-E permits the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Rule 8.900-E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade Managed Portfolio Shares of the Veridien Climate Action ETF (the “Fund”), a series of the Tidal Trust II (the “Trust”), under Rule 8.900-E.

The Commission has previously approved or noticed for immediate effectiveness the listing and trading on the Exchange of Managed Portfolio Shares under NYSE Arca Rule 8.900-E.⁵

⁴ Rule 8.900-E(c)(1) provides that the term “Managed Portfolio Share” means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁵ See Securities Exchange Act Release Nos. 89663 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR-NYSEArca-2020-48) (Order Approving a Proposed Rule Change,

Description of the Fund and the Trust

The shares of the Fund (the “Shares”) will be issued by the Trust, a statutory trust organized under the laws of the state of Delaware and registered with the Commission as an open-end management investment company.⁶ The investment adviser to the Fund will be Toroso Investments, LLC (the “Adviser”). Veridien Global Investors LLC will be the sub-adviser (the “Sub-Adviser”) for the Fund. Foreside Fund Services, LLC (the “Distributor”) will serve as the distributor for the Fund’s Shares. U.S. Bank Global Fund Services will serve as the transfer agent for the Fund (the “Transfer Agent”). U.S. Bank National Association will be the Fund’s

as Modified by Amendment No. 1, To List and Trade Shares of Gabelli ETFs Under Rule 8.900-E, Managed Portfolio Shares); 90528 (November 30, 2020), 85 FR 78389 (December 4, 2020) (SR-NYSEArca-2020-80) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of Alger Mid Cap 40 ETF and Alger 25 ETF Under Rule 8.900- E); 90683 (December 16, 2020), 85 FR 83665 (December 22, 2020) (SR-NYSEArca-2020-94) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF Under NYSE Arca Rule 8.900-E); 92349 (July 19, 2021), 86 FR 39084 (July 23, 2021) (SR-NYSEArca-2021-54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Cambiar Large Cap ETF, Cambiar Small Cap ETF and Cambiar SMID ETF) (the “Cambiar Notice”); 94629 (April 7, 2022), 87 FR 21993 (April 13, 2022) (SR-NYSEArca-2022-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the FMC Excelsior Focus Equity ETF under Rule 8.900-E (Managed Portfolio Shares)) (the “FMC Notice”).

⁶ The Trust is registered under the Investment Company Act of 1940 (the “1940 Act”). On October 14, 2022, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the “1933 Act”) and the 1940 Act for the Fund (File Nos. 333-264478 and 811-23793) (“Registration Statement”). The Trust subsequently filed Post-Effective Amendment No. 74 to the Registration Statement. See Post-Effective Amendment No. 74 to Registration Statement on Form N-1A for the Trust, dated April 21, 2023 (File Nos. 333-264478 and 811-23793). The Commission issued an order granting exemptive relief to the Trust (“Exemptive Order”) under the 1940 Act on March 21, 2023 (Investment Company Act Release No. 34863). The Exemptive Order was granted in response to the Trust’s application for exemptive relief (the “Exemptive Application”) (File No. 812-15411). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

custodian (the “Custodian”). All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under Rule 8.900-E(b)(1).

Rule 8.900-E(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket.⁷ Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

⁷ Rule 8.900-E(c)(5) provides that the term “Creation Basket” means, on any given business day, the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Rule 8.900-E(b)(4) is similar to Commentary .03(a)(i) and (iii) to Rule 5.2-E(j)(3); however, Commentary .03(a) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.⁸ Rule 8.900-E(b)(4) is also similar to Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that Rule 8.900-E(b)(4) relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to an Investment Company’s portfolio and Creation Basket, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio and/or Creation Basket. The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser, Sub-Adviser, and their related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. The Fund will also be required to

becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser, Sub-Adviser, or the Trust who makes decisions pertaining to the Fund's portfolio composition or that has access to information regarding the Fund's portfolio composition or that has access to information regarding the Fund's portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 8.900-E(b)(5) requires that any person or entity, including an AP Representative (as defined below), custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Description of the Fund⁹

comply with Exchange rules relating to disclosure, including Rule 5.3-E(i).

⁹ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act. See 17 CFR 240.10A-3.

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and the holdings will be consistent with all requirements in the Exemptive Application and Exemptive Order.¹⁰

The Fund's primary objective is to seek long-term growth of capital by investing in public companies with technologies and business models that contribute to climate change mitigation. Under normal circumstances, the Fund will invest at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies that the Adviser and/or Sub-Adviser believes are making a substantial contribution to mitigating climate change. The Fund's portfolio will generally hold the securities of between 35 and 50 companies.

Investment Restrictions

The Fund's holdings will be consistent with all requirements described in the Exemptive Application and Exemptive Order.¹¹

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek

¹⁰ Pursuant to the Exemptive Order, the only permissible investments for the Fund are the following that trade on a U.S. exchange contemporaneously with Shares of the Fund: exchange-traded funds ("ETFs"), exchange-traded notes, exchange-listed common stocks, exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metal trusts, exchange-traded currency trusts, and exchange-traded futures for which the reference asset is one in which the Fund may invest directly, in the case of an index future traded on a U.S. exchange, is based on an index, the components of which are a type of asset in which the Fund could invest directly, as well as cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). All of the equity instruments or futures held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance group ("ISG") or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹¹ See id.

performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹²

Creations and Redemptions of Shares

Creations and redemptions of Shares will take place as described in Rule 8.900-E. Specifically, in connection with the creation and redemption of Creation Units¹³ the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (a "Confidential Account").¹⁴ An Authorized Participant ("AP"), as defined in the applicable Form N-1A filed with the Commission, will sign an agreement with an AP Representative¹⁵ establishing the Confidential Account for the benefit of the AP. AP

¹² The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

¹³ Rule 8.900-E(c)(6) provides that the term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash. Rule 8.900-E(c)(7) provides that the term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash. For purposes of this filing, the terms "Creation Unit" means either a Creation Unit as defined in Rules 8.900-E(c)(6) or a Redemption Unit as defined in Rule 8.900-E(c)(7).

¹⁴ Rule 8.900-E(c)(4) provides that the term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

¹⁵ Rule 8.900-E(c)(3) provides that the term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized

Representatives will be broker-dealers. An AP must be a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or a participant in the Depository Trust Company, and must have executed an authorized participant agreement (“Participant Agreement”) with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP’s Confidential Account, for the benefit of the AP, without disclosing the identity of such securities to the AP.

Each business day, the Fund’s Custodian will transmit the underlying securities of the Fund’s Creation Basket (as described below) to each AP Representative. This information will permit an AP that has established a Confidential Account with an AP Representative to transact in the underlying securities of the Creation Basket through their AP Representatives, enabling them to engage in in-kind creation or redemption activity without knowing the identity or weighting of those securities. Fund Shares will be issued and redeemed in Creation Units of 25,000 Shares. The size of a Creation Unit is subject to change. The Fund will offer and redeem Creation Units on a continuous basis at the net asset value (“NAV”) per Share next determined after receipt of an order in proper form. The Fund’s NAV will be determined as of the scheduled closing time of the regular trading session on the Exchange (ordinarily, 4:00 p.m. Eastern Time (“E.T.”)) on each day that it is open for business.

In order to keep costs low and permit the Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. The Fund will issue Creation Units in exchange for a “Fund Deposit,” which is either (i) the in-kind deposit

Participants.

of a designated portfolio of securities (the “Deposit Securities”) and the amount of the “Cash Component” (as defined below) or (ii) the cash value of the Deposit Securities. The Fund may permit or require the substitution of a “cash in lieu” amount (the “Deposit Cash”) to be added to the Cash Component to replace any Deposit Security. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the value of the Deposit Securities or Deposit Cash, as applicable. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the value of the Deposit Securities or Deposit Cash, as applicable. The Fund will redeem Creation Units either in-kind or in cash, or combination thereof, as determined by the Trust. Redemption proceeds may consist of a designated portfolio of securities (the “Fund Securities”) plus cash in an amount equal to the difference between the NAV of Shares being redeemed, as next determined after a receipt of a redemption request in proper form, or the cash value of the Fund Securities (the “Cash Redemption Amount”). In addition, at the Trust’s discretion, an AP may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.

On each business day, prior to the opening of business on the Exchange (ordinarily, 9:30 a.m. E.T.), the Custodian will transmit to each AP Representative the list of names and quantities of each Deposit Security and the amount of the Cash Component (if any) to be included in the current Fund Deposit (based on information as of the ends of the previous business day). Such Fund Deposit is applicable to purchases of Creation Units until such time as the next-announced Fund Deposit is made available. On each business day, prior to the opening of business on the Exchange, the Custodian will also transmit to each AP Representative the list of the names and quantities of the Fund Securities that will be applicable to redemption requests received in proper

form on that day. On any given business day, the names and quantities of the instruments that constitute the Deposit Securities and the names and quantities of the instruments that constitute the Fund Securities will correspond pro rata to the positions in the Fund's portfolio and, thus, will be identical. These instruments may be referred to, in the case of either a purchase or a redemption, as the "Creation Basket."

Placement of Purchase Orders

The Fund will issue Shares through the Transfer Agent on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs, including transparent ETFs. The Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Transfer Agent will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Transfer Agent may reject any order which is not submitted in proper form, as described in the Fund's prospectus or Statement of Additional Information ("SAI"). The NAV of the Fund is expected to be determined once each business day as of the close of the regular trading session on the Exchange (ordinarily, 4:00 p.m. E.T.). An AP generally must submit an irrevocable purchase order no later than 4:00 p.m. E.T. (the "Cut-Off Time") in order to receive that business day's NAV. The business day the order is deemed received by the Transfer Agent is referred to as the "Order Placement Date." An order to create Creation Units is deemed received on a business day if (i) such order is received by the Cut-Off Time on such day and (ii) all other procedures set forth in the Participant Agreement are properly followed. In purchasing the necessary securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

Purchases of Shares will be settled in-kind and/or in cash for an amount equal to the applicable NAV per Share purchased plus applicable transaction fees.¹⁶

Authorized Participant Redemption

The Shares may be redeemed to the Fund in Creation Unit size or multiples thereof as described below. Redemption orders of Creation Units must be placed by or through an AP. Creation Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a redemption request by the Fund through the Transfer Agent. A fixed redemption transaction fee may be imposed to offset costs associated with redemption orders.

Orders to redeem Creation Units must be submitted in proper form to the Transfer Agent prior to the Order Cut-Off Time. A redemption request is deemed received on a business day if (i) such order is received by the Transfer Agent by the Cut-off Time on such day and (ii) all other procedures set forth in the Participant Agreement are properly followed. As with the purchase of securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. In the case of full or partial cash redemptions, the AP will receive the cash equivalent of the Fund Securities it would otherwise receive through an in-kind redemption, plus the same Cash Redemption Amount to be paid to an in-kind redeemer. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open

¹⁶ To the extent that the Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

Net Asset Value

The NAV will be calculated for the Shares of the Fund on each business day. The Fund's NAV is determined as of the scheduled close of regular trading on the Exchange, normally 4:00 p.m. E.T., each day the Exchange is open for business. The NAV of the Fund's Shares is determined by dividing the total value of the Fund's assets, less any liabilities, by the total number of Shares outstanding of the Fund at the time the determination is made.

Generally, the Fund's portfolio securities are valued each day at the last quoted sales price on each security's primary exchange. Securities traded or dealt in upon one or more securities exchanges for which market quotations are readily available and not subject to restrictions against resale shall be valued at the last quoted sales price on the primary exchange or, in the absence of a sale on the primary exchange, at the mean between the current bid and ask prices on such exchange. Securities primarily traded in the NASDAQ National Market System for which market quotations are readily available shall be valued using the NASDAQ Official Closing Price. If market quotations are not readily available, securities will be valued at their fair market value as determined in good faith by the Fund's fair value committee in accordance with procedures approved by the Board. Securities that are not traded or dealt in any securities exchange (whether domestic or foreign) and for which over-the-counter market quotations are readily available generally shall be valued at the last sale price or, in the absence of a sale, at the mean between the current bid and ask price on such over-the-counter market.

More information about the valuation of the Fund's holdings can be found in the SAI.

Information regarding the Fund's NAV and how often Shares of the Fund traded at a

price above (i.e., at a premium) or below (i.e., at a discount) the Fund's NAV will be available on the Fund's website (www.veridienglobalinvestors.com).

Availability of Information

The Fund's website, www.veridienglobalinvestors.com, will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁷ and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

Form N-PORT requires reporting of a Fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a Fund's SAI, its shareholder reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. The Fund's SAI and shareholder reports are available free upon request from the Fund, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed onscreen or downloaded from the Commission's website at www.sec.gov.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Verified Intraday Indicative Value

¹⁷ The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

“VIIV”), as defined in Rule 8.900-E(c)(2),¹⁸ will be widely disseminated by the Reporting Authority¹⁹ and/or one or more major market data vendors in one second intervals during the Exchange’s Core Trading Session and will be available to all market participants at the same time.

Dissemination of the VIIV

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund’s underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund’s actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

¹⁸ Rule 8.900-E(c)(2) provides that the term “Verified Intraday Indicative Value” is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Exchange’s Core Trading Session by the Reporting Authority.

¹⁹ Rule 8.900-E(c)(8) provides that the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the NAV, the VIIV, or other information relating to the issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

The VIIV will be widely disseminated to all market participants at the same time by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Exchange's Core Trading Session. The VIIV is based on the current market value of the securities in the Fund's portfolio that day. The methodology for calculating the Fund's VIIV is available on the Fund's website. The VIIV is intended to provide investors and other market participants with a highly correlated per Share value of the Fund's portfolio that can be compared to the current market price. Therefore, under normal circumstances the VIIV would be effectively a near real time approximation of the Fund's NAV, which is computed only once a day and is available free of charge from one or more market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²⁰ Trading in Shares of the Fund will be halted if the circuit breaker parameters in Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to Rule 8.900-E(d)(2)(C), which sets forth circumstances under which trading in the Shares of the Fund will be halted.

Specifically, Rule 8.900-E(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial

²⁰ See Rule 7.12-E.

instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²¹

Rule 8.900-E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the NAV, or the holdings are available, as required.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange in all trading sessions in accordance with Rule 7.34-E(a). As

²¹ The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) the intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV.

provided in Rule 7.6-E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

The Shares will conform to the initial and continued listing criteria under Rule 8.900-E, as well as all terms in the Exemptive Order. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products. As part of these surveillance procedures and consistent with Rule 8.900-E(b)(3) and 8.900-E(d)(2)(B), the Adviser will upon request make available to the Exchange and/or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, the daily portfolio holdings of the Fund. The issuer of the Shares of the Fund will be required to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5-E(m).

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Fund would meet each of the rules relating to listing and trading of Managed Portfolio Shares. To the extent that the Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading on the

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

Exchange or commence delisting procedures under Rule 8.900-E(d)(2)(B). Specifically, the Exchange would consider the suspension of trading, and commence delisting proceedings under Rule 8.900-E(d)(2)(B), of the Fund under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Fund; (b) if the Exchange has halted trading in the Fund because the VIIV is interrupted pursuant to Rule 8.900-E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in the Fund because the NAV with respect to such Fund is not disseminated to all market participants at the same time, the holdings of such Fund are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900-E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in Shares of the Fund pursuant to Rule 8.900-E(d)(2)(C)(i) and such issue persists past the trading day in which it occurred; (e) if the Fund has failed to file any filings required by the Commission or if the Exchange is aware that the Fund is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff with respect to the Fund; (f) if any of the continued listing requirements set forth in Rule 8.900-E are not continuously maintained; (g) if any of the statements of representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules as specified herein to permit the listing and trading of the Fund, are not continuously maintained; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As discussed above, the Adviser is not registered as a broker-dealer but is affiliated with

a broker-dealer and has implemented and will maintain a “fire wall” with respect to such affiliate broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio and Creation Basket. The Sub-Adviser is neither registered as a broker-dealer nor affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser or Sub-Adviser, as applicable, will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser, Sub-Adviser, or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

In addition, Rule 8.900-E(b)(5) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company

portfolio or Creation Basket. Any person or entity who has access to information regarding the Fund's portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio or changes thereto or the Creation Basket.

The Exchange further believes that Rule 8.900-E is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund because it provides meaningful requirements about both the data that will be made publicly available about the Shares, as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection set forth in Rule 8.900-E(b)(5) will act as a safeguard against misuse and improper dissemination of information related to the Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material non-public information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. Accordingly, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund and to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange would halt trading under certain circumstances under which trading in the Shares of the Fund may be inadvisable. Specifically, trading in the Shares will be subject to

Rule 8.900-E(d)(2)(C)(i), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁴ Additionally, trading in the Shares will be subject to Rule 8.900-E(d)(2)(C)(ii), which provides that the Exchange would halt trading where the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial

²⁴ See note 20, supra.

and continued listing criteria in Rule 8.900-E.²⁵ The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order.²⁶ As noted above, FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to trading of Shares of the Fund, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation

²⁵ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act. See 17 CFR 240.10A-3.

²⁶ See note 9, supra.

that the NAV per Share of the Fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, its shareholder reports, its Form N-CSR (filed twice a year), and its Form N-CEN (filed annually). The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Exchange's Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for the Fund will include a prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under Rule 8.900-E. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The Exchange also believes that the proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit the listing and trading of an additional actively-managed exchange-traded product, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved, and noticed for immediate effectiveness, proposed rule changes to permit listing and trading on the Exchange of Managed Portfolio Shares similar to the Funds.³⁰ The proposed listing rule for the Fund raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³¹

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ See supra note 5.

³¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2023-33 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2023-33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NYSEARCA-2023-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood

Assistant Secretary

³² 17 CFR 200.30-3(a)(12), (59).